for court

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

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DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

STATE OF WASHINGTON,

Respondent,

v.

JOHN M. BALE

Appellant.

No. 48042-5-II

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW
RAP 10.10

I. MOTION

I, John M. Bale, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits. The appellant also now wishes to raise these issues in this court due to the fact his due process rights have been violated along with his constitutional amendment 6, 14 rights, and Wash.const.art. I § 22, and 5 and R.C.W. violation(s) that will be addressed in this S.A.G as follows:

II. GROUNDS

1. Was Defendants Jury Poisoned When Convicting Him of 2 Counts of 1° Assault, by Considering Evidence of Theft of a Firearm that Has Since Been Dismissed by the Court of Appeals

The jury's verdict in was based on knowledge and evidence that this defendant possessed a stolen firearm, when fleeing the officers, and such evidence at trial affected the Assault verdicts entered by the jury. The jury's kno9wledge that the defendant used a stolen firearm in the commission of the alleged assaults cannot be said to have had no effect on the jury verdicts.

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RULES, STATUTES, AND CONST. VIOLATIONS.

° violation of wash.const. Art I § 1,2,3,4,5,5,6,7,9,10, 13,21,22,25,29,30.

° violation of u.s. const. amend 1.

° violation of u.s. const. amend 4.

° violation of u.s. const. amend 6.

° violation of u.s. const. amend 14.

° violation of u.s. const. amend 16.

° violation of u.s. const. amend 24.

° violation of u.s. const. amend. that may not be claimed in this S.A.G. and said forth to protect Appellant's u.s. const. rights.

"If a person is believed to have a stolen firearm, then it is reasonable to reach inferences that the person in possession of a stolen firearm would intend to use the stolen firearm for a criminal purpose." State v. Saltarelli, 98 Win.2d 358, 655, P.2d 687 (1982).

That very inference of "intent" bolstered and became the foundation for the guilty verdicts on the two (2) "1° Assaults" charged in in this action.

The addmission of this prejudicial evidence cannot be deemed "harmless error", as it was presented in a case resting on the defendants actual "intent", and that intent was established by the determination of whether the defendant "possessed a stolen firearm" while fleeing from the officers.

The Court of Appeals has determined the defendant is not guilty of the "Possession of a Stolen Firearm" charge, directing it to be dismissed with prejudice.

The jury obviously thought the defendant had involvement in the prior theft of the firearm, since they rendered a guilty verdict on the the possession charge. Therefore the jury believed that the defendant had committed a prior crime, thereby laying a foundation for the intent on the assaults. The verdicts on the assaults were clearly tainted with this false evidence. The impact on the jury is so great that you cannot say it was only incidental. Once that information is out there you cannot un-ring that bell.

This improper evidence presented at trial regarding the stolen firearm, did establish the intent needed to convict on the assaults, and therefore the only remedy for this prejudice is a new trial on the remaining charges.

2. Did the State Fail to Prove the Actual Assault "Element" Which is Required in "Assaults Another With a Firearm", Charge?

The State focused solely on the element of intent to cause the required "Great Bodily Harm", while completely ignoring the element of actual "assault"

required under statutes for First Degree Assault pursuant to RCW 9A.36.011 (1)(a), which reads in relevant part: "assaults another with a firearm." There are two known ways to "assault another with a firearm" as follows:

(1) Requires shooting the victim with a bullet fired from the actual firearm;

(2) Requires hitting the victim with the firearm physically, without actually firing the firearm.

Neither of these required elements were shown or proven in the evidence presented at trial in this case.

The defendant did not shoot either officer anywhere, he never even fired the gun at anytime, nor did he at any time point the firearm at the officers, per their actual testimony at trial. Neither did the jury hear in testimony, that the defendants struggle with the officers resulted in the defendant striking either officer physically with the firearm. The officers made deliberate contact with the firearm, during the 5 - 10 second struggle by grabbing the fire arm slide and barrel, keeping it pointed away from them at all times.

The defendant had a firearm tucked in his waist band when he fled from the officers. As he ran the firearm slipped down his pant leg and as he was bent over with his back to the officers trying to pick it up, they tackled him from behind.

This conviction for "Assault in the First Degree", required a greater degree of proof being offered than simply the fact he possessed the firearm and had a 5 - 10 second struggle with the officers, even had they said, which they did not, that the firearm was pointed at them, to amount to a finding of guilt for this charge.

See, State v. Davis, 177 Wa.App. 454, 311 P.3d 1278 (2014)(defendants pointing a gun at victim constituted Second Degree Assault); or State v. Hart, 180 Wa.App. 297, 320 P.3d 1109 (2014),(aimed gun in the officers direction is

Second Degree Assault), or State v. Sakellis, 164 Wa.App. 170, 269 P.3d 1029 (2011)(three witnesses testified to pointing of gun or holding gun to victims head and striking victim with gun hand, was Second Degree Assault), or State v. Knight, 176 Wa.App. 936, 309 P.3d 776 (2013)(pointed gun to the head of victim and made actual threats to shoot, is Second Degree Assault) or State v. Chesnokov, 175 Wa.App 345, 305 P.3d 1103 (2013)(pointed gun to the head of victim, is Second Degree assault), or State v. Kier, 164 Wn.2d 798, 194 P.3d 212 (2008)(pointed gun at victim, then forced them from the vehicle, is Second Degree Assault).

Therefore, not only is the actual element of assault never proven in the struggle with the defendant by the evidence, the mere act of pointing the gun at the officers had that happened would be more in line with Second Degree Assault as shown above.

The reviewing courts have long held two or more reasonable inferences could be drawn drawn from a set of circumstances, and inference should not then be drawn, and it is reasonable for a jury to believe that the defendant never intended to cause an actual injury likely to cause either officers actual death, where there are not any facts showing that the defendant actually would have shot the officers.

In fact the officer's testimony admits that the defendant had the opportunity to shoot them during his fleeing, and did not act with an actual objective or purpose to accomplish shooting either officer by not pointing the firearm at them, therefore the defendant did not act with intent to cause the required "Great Bodily Harm" element in a First Degree Assault conviction. Also, without shooting or striking the officers physically with the firearm, the elemental intent of First Degree Assault is not met and cannot be inferred herein.

A new trial is then required with this failure to meet the proper elements of the charged and convicted offenses.

3. Did the State Violate Defendants Right to a Fair and Speedy Trial?

It is clear that the State violated the defendants right to a speedy arraignment and trial, and also when they acted improperly by doing the illegal "bind-over" process. The defendant was arrested on July 2, 2012, and was arraigned on August 3, 2012, some 33 days later. (See Appendix A.)

By law the court must set an arraignment date, and it "shall" be done within 14 days, or in this case it should have been done by July 16, 2012, and a trial date within 60 days, by September 14, 2012, when a defendant is in-custody. In this case the defendant, on September 10, 2012, objected to any delay on the record giving the court notice he was invoking his right to a speedy arraignment and trial, which has now been violated.

This case was delayed by reasons not addressed in c.r.R 3.3 or c.r.R 4.7, and since this delay violated the defendants Constitutional right to a speedy arraignment and trial, this case must be dismissed with prejudice c.r.R 3.3 (a)(4)

"When a long and unnecessary delay occurs between filing of charges and the arraignment, the "Sriker Rule" applies, and the court "shall" set a constructive arraignment date which starts the speedy trial period." State v. Striker, 87 Wash.2d 870 557 P.2d 847 (1976)

Under "Striker/Greenwood" a delay was unnecessary since the defendant was amenable to process in county jail and the state failed to exercise due diligence to bring the defendant before the court. State v. Hudson,130 Wash.2d 48, 54, 921 P.2d 538 (1996).

In the instant case the defendant was in custody and amenable to process, and it is now the state that must demonstrate that it acted with due diligence

in attempting to bring the defendant to trial. To defendants knowledge there is no such record available.

State v. Roman, 94 Wash. App. 211, 216, 972 P.2d 511 (1999),Due to this being (1)arbitrary governmental action and misconduct that (2) prejudices the defendants right to a fair trial, this court can dismiss this prosecution. (citing State v. Michielli, 132 Wn.2d 229,239-40, 937 P.2d 587 (1997), "Simple mismanagement is enough. Michielli, 132 Wn.2d at 239.

The defendants constitutional right to a speedy arraignment and trial was violated and he was prejudiced thereby, and the verdict should be set aside and the charges dismissed with predudice. **(see appendix A.)**

4. Did the Defendant's Case get Frustrated and Impeded by the Jail Staff Conduct of Violating the Court Order for Access to the Correctional Facility Law Library?

part A.

It is of record in this case that the defendant had raised ineffective assistance of counsel claims to the Court, and that the Court entered an order allowing hybrid-representation with counsel, also allowing the defendant access to the Law Library to prepare to assist in his defense " pro se". State v. Hightower, 36 Wash. App. 536, 541, 676 P.2d 1016 (1984).

However the defendant was still denied this "court ordered" access to the Law Library. Under the First and Fourteenth Amendments of the U.S. Constitution, it is established that inmates have a right of access to the courts.

Lewis v. Casey, 518 U.S. 343, 346 (1996),"Access to the courts means the opportunity to prepare, serve and file legal pleadings or other documents as necessary or appropriate in order to commence or continue court proceedings affecting one's personal liberty."

This right requires correctional staff to assist inmates in the preparation and filing of meaningful legal papers by providing inmates with adequate law

libraries. Bounds v. Smith, 430 U.S. 817, 828 (1977).

There was case law and other resources in the facility law library, that correctional staff with-held, violating the Court Order for access to said law library, that impeded the defendant's ability to prepare and assist in his own defense.

Benjamin v. Kerik, 102 F. Supp.2d157 (S.D.N.Y. 2000); Judgment affirmed,, 264 F.3d. 157 (2nd Cir. 2001), "An incarcerated defendant may not meaningfully exercise his right to represent himself without access to lawbooks, witnesses, or other tools to prepare a defense." See also:

Bribiesca v. Galaza, 215 F.3d. 1015, 1020 (9th Cir. 2000)(dictim) accord;

Taylor v. List, 880 F.2d. 1040, 1047 (9th Cir. 1989);

Milton v. Morris, 767 F.2d. 1443, 1447 (9th Cir. 1985);

Kaiser v. City of Sacramento, 780 F.Supp 1309, 14-15 (E.D. Cal 1992)

The courts must apply the view articulated by the Supreme Court in Anderson v. Creighton, 483 U.S. 653, 97 L.Ed.2d. 523, 107 S. ct. 3034 (1987), to determine whether the right is sufficiently clear that a reasonable official would understand that what he is doing violates the inmates rights.

Since the jail had record of the court ordered hybrid-representation with the required law library access and since the defendant repeatedly informed and grieved the denial of this right to the jail officials, it is not reasonable that the jail officials were not aware they were violating this defendants rights.

This denial caused real and actual prejudice to the defendant in that he was not able to properly prepare for trial and that impacted his ability to adequately defend himself. A new trial is required in this instance (see appendix B.)

part B. The records established the Trial Court entered an order upon the request of the assigned trail attorney, whom claimed "hybrid" type of representation was necessary to allow the attorney to have his client assist with his own defense. (see appendix B.)

The Trial Court clearly agreed with the attorney that he needed his client to assist with the defense, and approved "hybrid" type of representation, allowing that Appellant would have law library type of access during these proceedings. (see appendix B.)

The Court of Appeals recognized this from the records, however appeared to believe that there was no rights to assist trial counsel in Appellant's actual defense, therefore nothing required access to the law library. However, this ignored the fact that this attorney made the request to the Trial Court, whereby he claimed to need the assistance in the defense, and this assistance was deprived because of the jails conduct.

The attorney therefore had admitted his own ineffectiveness in open Court to the Judge, and the Judge agreed by signing the order directing that Appellant be allowed to assist his attorney.

In addition to the attorney admitting to needing help from the client, and Court agreeing with the attorney's ineffectiveness, we are faced with a situation that the client was knowing to be under the influence at the time he ran from the officers, which contradicts the findings on the intent element in the Assault charges, however, the attorney failed to request the required instruction for the Jury on the intoxication factor. see State V. Stevens, 158 Wn.2d 304, 143 P.3d 317 (2006)(intoxication instruction negated the intent under a child molestation charge).

The right to effective assistance of counsel advances the right

to a fair trial. see Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). That right to effective assistance includes a 'reasonable investigation by the defense counsel' which was deprived. see State V. Brett, 142 Wn.2d 853, 16 P.3d 601 (2001). Courts have long recognized effective assistance of counsel rests on access to evidence, and in some case expert witnesses are crutial elements of the due process to a fair trial. see State V. Boyd, 160 Wn.2d 424, 153 P.3d 54 (2007).

That a person whom happens to be a lawyer is alongside accused however is not enough to satisfy the constitutional commands. Sixth amendment recognizes the right to assistance of counsel, because it envisions counsel's playing a role critical to the adversarial system to produce just results. An accused is entitled to an attorney whom plays the necessary role to ensure that the trial is fair, whether the attorney is appointed or retained. see State V. Boyd, 160 Wn.2d 424, 153 P.3d 54 (2007).

Trial Court has a duty to investigate an attorney client conflict of interest, if it knows or should have known such potential conflict existed, as the trial may have been effected. see State V. Reagan, 143 Wa.App. 419, 177 P.3d 783 (2008); Mickens V. Taylor, 535 U.S. 163, 122 S.Ct. 1237 (2002).

The Court of Appeals claimed this matter addressed points from outside the record then on review before the Appellant Court, however the attorney's effectiveness can be determined from needing a client's "hybrid" assistance in the defense, requesting that the client have a unbridged access to the law library resources to prepare his defense for the attorney in question. (see appendix B.)

In effect, the attorney's actual request was for his client to have "pro se" access from the Trial Court, apparently necessary for defense counsel's effective representation.

The Court of Appeals should have directed a new trial, with an attorney that could represent the client without necessarily asking that the client be allowed to prepare and assist with defense.

5). DID THE COURT OF APPEALS ERROR FINDING SUFFICIENCY OF EVIDENCE OF THE FIRST DEGREE ASSAULT CHARGED?

The Court of Appeals affirmed two "first degree assaults", on finding sufficient evidence in the light most favorable to State's position.

The Court addressed conflicting testimony of the two victims, where one officer claimed Appellant did not assault him, but had a clear opportunity to assault him by shooting. The Court defers to the Jury on issues of conflicting testimony, however overlooks the fact a victim did admit Appellant did not commit assault with this firearm on that victim at anytime.

The Court of Appeals errors in the claim that a 'reasonable inference could be drawn from the evidence, for any reasonable person to conclude Appellant's actual "intent" was to commit the required "great bodily harm" required in 'First Degree Assault' charged in this instance.

> **Presumptions are:** "Assumptions of fact which the law requires to be made from another fact or group of facts".
> **Inferences are:** "logical deductions or conclusions from established facts" see State V. Jackson, 112 Wn.2d 867, 774 P.2d 1211 (1989).

Intent is Present: "when a person acts with the objective or purpose to accomplish a result which constitutes a crime" 9A.08.010.

Great Bodily Harm is: "bodily injury which creates probability of death." RCW 9A.04.110(4)(c).

Therefore, the evidence must lead to a reasonable inference of the **intent to commit bodily injury which creates probability of the death** of the victim, which is not present in the current instance.

The evidence does not establish that Appellant ever intended to inflict the required "great bodily harm" on either of the two officers, where when struggling with the officers for 5 to 10 mere seconds and breaking free of the officers, this Appellant started to immediately flee from the officers again.

The Jury would have to establish a reasonable belief that the the evidence showed the Appellant intended to shoot the two police officers someplace likely to have caused an injury with probability of causing death.

The Jury would have to base any such inference of this intent element on mere speculations in this instance, where no shots are fired, no words exchanged, and no threats are made to the officers at any point, and Appellant merely continued fleeing from both of the officers after breaking free of the 5 to 10 second struggles with the victims.

> "However, inferences based on circumstantial evidence must be reasonable, and **can not be based on merely a speculation**." Jackson, V. Virginia, 443 US 307, 319, 99 S.Ct. 2781 (1979).

The evidence presented would not lead a reasonable person to the conclusions that the Appellant "intended" to commit required "great bodily harm" against either police officer, without merely speculating intent in the evidence presented.

The Supreme Court has held: "The broad statement of the Court of Appeals that: [A]n inference should not arise, where there are other reasonable conclusions that would follow from the same set of circumstances, is correct." State V. Bencivenga, 137 Wn.2d 703, 974 P.2d 852 (1999); see also State V. Washington, 64 Wa.App. 118, 822 P.2d 1245 (1992).

While fleeing initially, both the holster and gun came loose of Appellant's ankle, falling to the ground, almost tripping Appellant in flight from the officers, and the two became separated. Thereby, Appellant merely picked up the gun while running away in the woods, and the officers never seen the gun and holster become separated in their testimony evidence presented.

The evidence at trial established the firearm's firing chamber did not have a bullet ready to fire, but that bullets could be made ready to fire from the loaded clip or magazine of the firearm.

The evidence at trial showed Appellant's recent purchase of the firearm, and nothing established that Appellant was familiar with the firearm's operations or workings.

The Court of Appeals relied heavily on the fact the clip was in the firearm loaded, the gun and holster were separated, and that the firearm was actually cocked and ready to fire the empty chamber at the time of the 5 to 10 second struggle with the officers, in which the firearm is point at one of the officers.

There is simply nothing showing that Appellant knew the firearm in question had a hammer that could be cocked before firing, and the Appellant did not keep a bullet in the firing chamber of a semi-auto pistol specifically to avoid accidental discharge, which might injure

appellant or a friend, which would not have been necessary had this Appellant known the gun had a hammer that required cocking before a bullet could be fired.

The officer "Morrison" believed he heard a metallic sound when tackling Appellant, which he later believed was the gun being cocked and readied to fire. 1 VRP at 74. However, it is reasonable to make the inference that the officer actually heard his own handcuffs, or keys, mace, firearms, tasers, or other metal objects on his utility belt, which likely hit each other while struggling with Appellant.

The conviction rested on the intent of the Appellant, and this intent cannot be inferred from the evidence presented in this trial, as nothing but mere speculation determined Appellant intended to of shot the officers causing an injury likely to cause their death, as if Appellant had shot the officers, he likely intended merely to in fact stop there pursuit, not cause their death.

6). Was Defendant prejudiced by the courts mismanagement?

Was defendant prejudiced and/or rights violated when the courts failed to inform him of his 3.5 rights to testify and the repercussions if defendant did not testify and by not testifying defendant would be giving up and/or waiving his right of freedom of speech? The law is clear that a court shall and/or must inform defendant of his full 3.5 rights which includes the repercussions. The court has a duty to perform simple tasks that uphold the interest of our justice system and the rights of the defendant and/or the accused. I wish to blow the whistle for the betterment of our courts and for the rights of the accused.

How was the defendant prejudiced, you ask? At critical stages a defendant has two decisions. (1)is to go to trial and/or take a deal, (2) ~~and~~ the other one is to testify and/or freedom of speech right to verbalize his dispute to the allegations (which I, the defendant, was prejudiced and not informed of). Could it be said and/or fair to say the courts, prosecutors, court appointed attorneys just want to get in and out and run people through the court nets as if defendants are cattle to be run to the slaughter house? Why do the courts explain part of defendants 3.5 rights? Is it because if defendants do not dispute the allegations the defendant is charged with that the allegations become fact because, defendant has failed to verbally, on record, dispute the alleged charges, thus leaving the Judge and/or court no choice but to rule in the prosecutors favor and then prosecutors statements presented become true and fact, thus sealing the case and the alleged charges.

Had the courts / Judge explained on record my full constitutional 3.5 rights to testify, and that I would be waiving my constitutional right to tell my side of the story and/or would be waving my constitutional right of freedom of speech if I failed to testify. The courts do have a 3.5 rights form, but it fails to inform defendants of the repercussions! This would be a simple part to add to the 3.5 rights form. "By these actions, I, the defendant, have been prejudiced. State V. Williams, 955 p.2d 865, 91 Wn.App 344 (1998); State V. Michelli, 132 Wn.2d 229, 239, 937 P.2d 587 (1997); (Wash. App.Div 1 2011). Simple mismanagement of the court is enough and/or has prejudiced the defendants U.S. Constitutional article I, section 5, 22 rights and the charges shall be dismissed pursuant to c.r.R 8.3 (b). (see appendix C. of 3.5 rights supporting appellants claim). 3.5 rights must be read as a whole not in part.

7) Was Appellant prejudiced and vindictively Over charged by the state and/or prosecutor?

The prosecutor vindictively upped the charges from attempted first degree assault to two first degree assaults' when the charges only and/or amounted to "Gross Misdemeanor" charges pursuant to, which reads:

R.C.W. 9.41 270 (2). Any person violating the provisions of subsection (1) above (which states any person displaying a firearm that manifests an intent to intimidate another and/or warrants alarm for the safety of others) SHALL be guilty of "A GROSS MISDEMEANOR". (See appendix D)

R.C.W. 9A.28.020 (3), (D), (E). Any attempt to commit a crime is a "Gross Misdemeanor" unless the crime is attempted murder which is not the case in this matter and/or appellants case. (See Appendix E)

The law is clear and under State V. Korum, 120 Wn.App. 686 P.3d 166 (Wash. App.Div.2 2004) a prosecutor who increases the charges day's prior to trial, acts vindictively.

The prosecutor had all the relevant victims and failed to show facts of cause to why the charges had been increased, this violating defendants due process rights, and strategy to properly defend himself, moreover frustrating and impeding defendants counsels strategy.

Why was defendant way over charged and sentenced to 490 months? Under State V. Owens, 180 Wn.App 846, 326 P.3d 757, (Wash.App. Div.2 2014) this defendant in the above case displayed a firearm and never fired his weapon. (Just because the victims are peace officers, does it give the State the right to vindictively increase the charges? No!) The defendant in State V. Owens, and the defendant in this matter displayed a firearm and the peace officers "us" to drop our firearm(s) and sometime later we dropped our firearms after repeatedly having been told repeatedly to drop it.

This also happened to the appellant in this case and/or matter. Mere possession of a firearm does not show intent! I, the defendant/Appellant had an opportunity to fire and/or discharge the firearm at multiple times, but that was not my intentions. What my intentions were was to throw the firearm in the woods that was a couple of feet (10'-15') from the place the peace officers tackled me. This case is a simple "GROSS MISDEMEANOR" and/or an illegal display6 of a weapon.

So, at this time, I am requesting the courts to reverse this case and/or deem R.C.W. 9A.36.011 (1) (a) unconstitutionally vague and/or conflicting with R.C.W. 9.41.270 (2), and R.C.W. 9A.28.020 (3), (d) and (e).

8) Was defendant prejudiced and his Constitutional rights violated when:

A. Defendants counsel failed to submit jury instructions and/or of a lower charge of unlawful display of a firearm (when it was ordered by the court), State V. Owens, 180 Wn.App 846, 324 P.d 757, (Wash.App.Div.2 (2014); State V. Hohn, 174 Wash.2d.126, 129, 271 P.3d 892 (2012). (see 10/30/13 RP 3,4)

B. Defendants counsel failed to inform his client of his 3.5 rights to testify and if his client and if his client and/or defendant did not testify on his own behalf defendant would be waiving his constitutional rights of freedom of speech. State V. Williams 995 P2.d 865 91 Wn.App 344 (wash.App.Div.3 1998); Violation of cont. article 1, section 5, 22 right(s).

To prevail on ineffective assistance of counsel, defendant must prove that counsels performance was deficient, and the deficiency prejudiced an element of the defense and must be shown. Strickland V. Washington, 466 U.S. 668, 104 S.ct 2052 (1984); Netherton in re 306 P.3d 918, 177 Wn.2d 798 (Wash.2013). We begin with a strong presumption that adequate and effective representation is provided in every matter.
State V. McFarland, 127 Wn.2d. 322, 889 P.2d 1251 (1995)
"Deficient" performance, is that which falls below an objective and/or objectionable standard of reasonableness.
State V. Horton, 116 Wn.,App. 909, 68 P.3d 1163 (2003). The court should see that defendants counsels conduct, by failing to submit jury instructions and/or jury instructions of a display of a firearm (when it was ordered by the court and/or Judge) comes to show defendants counse3l fell way below any reasonable standard. The attorney is appointed by the courts to represent defendants best interests, which includes filing proper paperwork , like jury instructions, etc. The conduct of this court appointed attorney has failed in this instance to exercise the customary skills and diligence that a reasonably competent attorney would have done under similar circumstances and would not have forgot.

I, the appellant in this matter should have had a right to effective assistance of counsel and by this ineffective attorney my due process rights have been violated. Moreover, this incompetent attorney failed to inform and explain my 3.5 rights and repercussions if I failed to testify. Had he have informed and explained repercussions, I would have not waived my freedom of speech rights and/or right to defend myself against the allegations that appellant had been charged with.

The whole point of counsel is to properly inform their clients at all critical stages and/or times of their rights w hich includes a clear picture and/or and inferable explanation of their clients 3.5 rights to testify at a level a non-legal minded person can understand and defendants repercussions if he fails and/or chooses to testify. (How can a defendant act on his rights if counsel fails to explain them?).

This is a big issue with these court appointed attorneys. They are failing to explain to their clients their rights on record and/or before hearings, thus violating defendants due process rights and depriving him of his constitutional article I, section 5 and 22 rights that now require the courts to reverse the charges and remand to the county of Kitsap and/or dismiss charges.

9.) Was Defendant and/or Appellant prejudiced by states nondiscloser of witness Milner,Robert earl police statements?

To prevail and/or claim a Brady violation pursuat to Brady V. Maryland 373 u.s. 83,83 s.ct 1194 (u.s.md 1963), and Stenson In re 174 wn.2d 474,276 p.3d 286 (wash 2012.The Appellant and/or Defendant must prove that (1). statements have been made and (2).that the state knew statements have made and (3). that the state failed to provide Defendant. and Defendants counsel a copy of the witness's statements that peace officers took on 7/2/2012.

On 7/3/2012 peace officer #728 Morrison,Stephen wrote an Incident /Investigation Report that "officer schandel was advised by a witness (Milner,Robert Earl) that the two white male's (Delvo and Leonard) had thrown a gun and norcotics into the bushes." (see appendix F. Line 27) The state withheld statements that have been made by (Milner,Robert Earl) the witness who witnessed the alleged crime. Peace officers are trained to take all statements from all witness's.

The state had some sort of statement and/or probable cause too (1). (call Milner, Robert Earl) as a witness and (2). too quote him in a report. Why wasn't this witness enterviewed prior to tr -ial? Is it because this witness could have told a very differant story? Defendant and/or Appellant is entitled too every piece of evidence. By these acts and violations of prosecutor misconduct ,Defendant and/or Appellant has been prejudiced by not having a complete set of statements thus causing a clear violation of Defendants and/or Appellants constitutional Amend. 6,14 rights and Wash.const.art. I § 22, and 5 rights.

I the Defendant and/or Appellant have comb'd threw all reports and staements and can not see one statement that the witness (Milner,Robert Earl) has made in both officers have claim in support of these officers probable cause report that was filed with the court.

When probable cause is enterd and/or filed with the court the courts make a ruling off of the police reports. Now if the police reports are false in part and/or misleading the the report becomes Void. The court now must see the report was misleading on the drounds that the police had evidence to support the alleged crime by leading the court that they had a witness statement. By simply quoting a witness in the reports it is now believed that this witness would support the crime and/or the alleged assault's. The only remedy for these actions is to reverse and remand [s]ence this case has went to trial.

10.) Was Defendant and/or Appellant prejudiced when he had no minoritys of his pears in his jury?

The Appellant and/or Dfendant in this matter is entitled to have minority's on and/or in his jury board. their is many cases in the Supreme Court and Federal Court that have ruled that this is a real problem and it needs to change. Could it be said that in this matter that all and/or most of of the jury were from the segrgation times and some of the others have a strong up bringing about minoritys?

Why did the state remove the one and only black person from the jury board? Could it be that the only black jury would see that the charges are trumped up and find me not guilty, or the state weighing in on that there is only one black person and removing his and/or Defendants chance of a mistrial.

You and I know why, must Defendant and/or Appellant further explain? Also I wish to adress the issue on why did the court only call on two minoritys too stand in as an juror and in for the Defendant as a pear. Having an all white jury has prejudiced the Defendant. The court shoulad have had at least 1/3 of the jury of a minority and/or black decent to be present. This is a very unfair and unjust trial and has vilated Defendants Due process rights and his 14,6 amend. rights. A new trial is an order and at least 1/3 of a juryshall at least be minority's and/or black.

I have Googled how many black people and/or minoritys in Kitsap County over the age of eighteen, and have found Blacks 6,820, Natives 3,588, Asians 15,105, Mexicans 17,283. you are telling me out of 42,796 minority's the court could only come up with "ONLY TWO" black people , and not only that one of them was dimissed even before jury selection even started

The Defendant shall have a right too a percent of the jury to be of minority and/or black u.s v. Sanches-Lopez 878 f.2d 541,546 (9th cir. 1989), u.s. v. Suttiswad 696 f.2d 645,648-49 (9th cir. 1982).....

11. Did kitsap countys sheriffs office commit a crime when they deliberatly violated appelants court order to access his county jails law library?

The courts have past explained that when a defendant has an attorney that is considered that that is enough of access, but the courts have over looked the power of a court ORDER part.

Could it be said that a court ORDER has no POWER what so ever? And Kitsap County Sheriffs Office can do what it please's and decide what laws they want to follow moreover disregard for detainee's Constitutional rights?

These officer(s) of the law are sworn to up hold the law and sworn to protect the law of innocent till proven guilty in the court of law, is this not what the accused shall have a right to, with no third party interference which these officers have done and it is clear in the matter.

These officers had plenty of fair notice by inmate kite"(s) ,inmate grievance'(s), and when the order was granted two officers had been in the court room so in no-way can it be said they have not been on notice. Defendant at the time plead for his rights for his rights to access the county jails law library by court order. Defendant had seen many other inmates and/or detainee's who had trials before and after his and some of these detainees did Not even have court orders to access kitsap county jail law library. Why wasn't this defendant allowed access?

Does the court grant court Orders for a reason? Could it also be said that a defendant has a choice to choose what part of his judgeement and sentenceorder he will serve? When a court orders an action by an order it SHALL be upheld and not just for the one party to choose which one he decides on to follow. It is for the rights of fairness and a matter of law.

The kitsap county jail was open and not closed for any reason, nor was detainee and/or defendant in segregation nor the hole. This was a deliberate act to defendant and to impede detainees trial. This is a clear act of unfairness and this court should step up and see this unfair act and wrongful conviction that was won by an extra hand.

(NOTE; please see personal restraint petition for all kite,grievances apendixs supporting this claim.)

III. CONCLUSION

This case is fraught with fundamental errors of proper proceedure, evidence and elements of the charged crimes, both pre-trial and at trial, in violation of defendants rights under the Washington State and U.S. Constituitions.

The defendants right to a timely arraignment, a speedy trial and access to legal materials are all pre-trial constructive errors that reached a level of misconduct that prejudiced the defendants right to a fair trial.

During trial, the jury heard critical evidence that has now been proven false, that was fundamental in their ability to reach intent, that lead to their verdicts on the 1° Assaults. This is clear fruit of the poisonous tree evidence, that only a new trial can remedy.

Also, the clear inability of the state to prove the proper elements of the crimes of 1° Assault, demand a setting aside of those verdicts as the only remedy.

The convictions in this case accumulated to a sentence of 490 months for a young man where a weapon was not fired and no one was hurt, that is an excessive amount of time.

The above summarized have clear standing to warrant a new trial with charges commensurate with the actions of the defendant that are in evidence. A new trial will not only remedy all these defaults, but also in the interest of justice, set a course to new charges and punishment that fit the crime.

NOTE: If this court gives pettioner no relief he will briing these issues federal and/or in Tacoma District Court because, because I'm pleading I'm not guilty and will fight to the end and will not give up!

IV. RELIEF

The defendant now moves the Court to do the following:

(1) Dismiss all charges with prejudice and allow the state to re-file the appropriate charges against the defendant that meet the requirements of his actions; or

(2) Remand this case for a new trial.

I swear under penalty of perjury that all the foregoing statements are true to the best of my knowledge.

Dated this 27 day of May, 2016

John M. Bale, 845543

Appendix

A.

OFFICE OF
Gary Simpson
KITSAP COUNTY SHERIFF
614 DIVISION ST. MS-37 • PORT ORCHARD, WASHINGTON 98366 • (360) 337-7101 • FAX (360) 337-4923

January 15, 2016

John M. Bale #845543 CH-10
Washington Correction Center
POB 900
Shelton WA 98584

Re: Public Records Request
KCSO 16-0095

Dear Mr. Bale,

The Kitsap County Sheriff's Office has received your request for your jail dates regarding your July 2012 incarceration.

You were booked into the Kitsap County Correctional Facility on July 3, 2012 and released on November 15, 2012.

Sincerely,
David J. White
Chief of Detectives and Support Services

By: Karen M Brezler
Karen M. Brezler #1030
Public Records Officer

CERTIFICATE OF MAILING

I, Karen M. Brezler, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein. On January 15, 2016, I caused to be served via U S mail the foregoing letter.

Aem. 2

Superior Court Case Summary

Court: Kitsap Superior
Case Number: 12-1-00762-2

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	07-30-2012	INFORMATION	Information	
2	08-02-2012	PRELIMINARY APPEARANCE CTR0001	Preliminary Appearance Court Reporter Carisa Grossman	
			Court Grants Def's Mtn To	
			With/sub Counsel; Matter Cont'd	
		JDG0004	Judge Steven Dixon, Dept 4	
3	08-02-2012	ORDER APPOINTING ATTORNEY WTD0001	Order Appointing Attorney Gs Jones	
		ATD0002	Cross, John L.	
	08-02-2012	ORDER SETTING ACTION	Order Setting Arraignment	08-03-2012S4
4	08-02-2012	ORDER FOR PRETRIAL RELEASE JDG0004	Order For Pretrial Release/$500,000 Judge Steven Dixon, Dept 4	
5	08-03-2012	INITIAL ARRAIGNMENT JDG0004	Initial Arraignment Judge Steven Dixon, Dept 4	
		CTR0007	Court Reporter Kathy Todd	
			Formal Charging & Entry Of	
			Plea/motion To Withdraw/substitute	
			Counsel Granted	
6	08-03-2012	ACKNWLDGMT OF ADVICE OF RIGHTS	Acknwldgmt Of Advice Of Rights	
7	08-03-2012	ORDER APPOINTING ATTORNEY ATD0003	Order Appointing Attorney Jd Kibbe, Craig Gordon	
		WTD0002	Cross, John L.	
	08-03-2012	ORDER SETTING OMNIBUS HEARING ACTION	Order Setting Omnibus Hearing Omnibus	08-23-2012VM

About Dockets

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Kitsap Superior
614 Division St, MS 24
Port Orchard, WA
98366-4683
Map & Directions
360-337-7140[Phone]
360-337-4673[Fax]
Visit Website

Disclaimer

What is this website? It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

How can I obtain the complete court record? You can contact the court in which the case was filed to

4 A

Attn. 3

22	09-20-2012	CORRESPONDENCE	Correspondence Law Clerk To Def		
23	09-20-2012	MOTION HEARING JDG0001	Motion Hearing Judge Jeanette Dalton, Dept 1		
			Trial/status Continued		
		CTR0004	Court Reporter Nickie Drury		
24	09-20-2012	ORDER SETTING ACTION	Order Setting Fa/3.5 Status	10-04-2012VM	
	09-20-2012	ORDER SETTING TRIAL DATE	Order Setting Trial Date 10/30/2012 @9am		
25	09-25-2012	CORRESPONDENCE	Correspondence/ Def To Clerk		
26	09-25-2012	CORRESPONDENCE	Correspondence/ Def To Clerk		
27	09-25-2012	CORRESPONDENCE	Correspondence/ Clerk To Defendant		
	09-26-2012	COMMENT ENTRY	Copies To Dpa And Counsel Via Email		
28	09-27-2012	CORRESPONDENCE	Correspondence/def To Court Law Clerk To Defendant		
29	10-04-2012	REQUEST	Request Defense To Allow Use Of Jail Law Library By Inmate		
	10-04-2012	ORDER	Order Allowing Use Of Jail Law Library		
		JDG0004	Judge Steven Dixon, Dept 4		
30	10-04-2012	MOTION HEARING CTR0004	Motion Hearing Court Reporter Nickie Drury		
			For Access To Law Library/granted		
			Mot For New Counsel/denied & Mot		
		JDG0004	Judge Steven Dixon, Dept 4		
31	10-25-2012	STATE'S LIST OF WITNESSES	State's List Of Witnesses 1st		
32	10-30-2012	MOTION HEARING JDG0004	Motion Hearing Judge Steven Dixon, Dept 4		
		CTR0005	Court Reporter Andrea Ramirez		
			Parties Sent To Court Scheduler		
33	10-30-2012	MOTION IN LIMINE	Motion In Limine (defense)		
34	10-30-2012	MOTION IN LIMINE	Motion In Limine (prosecution's)		

name appears on these pages?
NO

- Assume any liability resulting from the release or use of the information?
NO

Please read

3

Adm. 4

Appendix B.

RECEIVED AND FILED
IN OPEN COURT
OCT 04 2012
DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE SUPERIOR COURT FOR KITSAP COUNTY, STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

JOHN BALE,

Defendant.

Case No. 12-1-00762-2

DEFENSE REQUEST TO ALLOW JAIL INMATE ACCESS TO THE LAW LIBRARY

MOTION

COMES NOW the defendant above named, by and through her attorney of record, Craig G. Kibbe, and moves the above entitled court to allow defendant access to the Law Library.

This motion is based upon the record and files herein, and subjoined declaration of Craig G. Kibbe.

DATED this 4th day of October, 2012.

CRAIG G. KIBBE, WSBA #31692
Attorney for Defendant

Appx. G

DECLARATION

I declare under penalty of perjury of the laws of the State of Washington that the following is true and correct. My name is Craig G. Kibbe and I am the attorney for the above named defendant.

The Defendant needs access to the Jail Law Library to assist counsel in his/her defense. This request is in accordance with the procedure outlined in the Kitsap County Jail Inmate Handbook.

DATED at Port Orchard, Washington, this 4th day of October, 2012.

CRAIG G. KIBBE

ORDER

THIS MATTER having come on before me, the undersigned, upon motion of the above named defendant, the court having reviewed the record and files herein and for good cause shown, does now therefore

ORDER, that defendant shall have access to the Kitsap County Jail Law Library in accordance with the Kitsap County Jail Inmate Handbook and safety procedures of the jail.

DONE IN OPEN COURT this 4 day of October, 2012.

JUDGE
STEVEN DIXON

Appendix C.

RULE 3.5
CONFESSION PROCEDURE

(a) Requirement for and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissible. A court reporter or a court approved electronic recording device shall record the evidence adduced at this hearing.

(b) Duty of Court To Inform Defendant. It shall be the duty of the court to inform the defendant that: (1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial.

(c) Duty of Court To Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.

(d) Rights of Defendant When Statement Is Ruled Admissible. If the court rules that the statement is admissible, and it is offered in evidence: (1) the defense may offer evidence or cross-examine the witnesses, with respect to the statement without waiving an objection to the admissibility of the statement; (2) unless the defendant testifies at the trial concerning the statement, no reference shall be made to the fact, if it be so, that the defendant testified at the preliminary hearing on the admissibility of the confession; (3) if the defendant becomes a witness on this issue, he shall be subject to cross examination to the same extent as would any other witness; and, (4) if the defense raises the issue of voluntariness under subsection (1) above, the jury shall be instructed that they may give such weight and credibility to the confession in view of the surrounding circumstances, as they see fit.

Appendix D.

West's Revised Code of Washington Annotated
Title 9. Crimes and Punishments (Refs & Annos)
Chapter 9.41. Firearms and Dangerous Weapons (Refs & Annos)

West's RCWA 9.41.270

9.41.270. Weapons apparently capable of producing bodily harm--Unlawful carrying or handling--Penalty--Exceptions

Currentness

(1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his or her place of abode or fixed place of business;

(b) Any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments.

Credits
[1994 sp.s. c 7 § 426; 1969 c 8 § 1.]

Notes of Decisions (31)

West's RCWA 9.41.270, WA ST 9.41.270
Current with all laws from the 2015 Regular Session and 2015 1st, 2nd, and 3rd Special Sessions

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Appendix E.

West's Revised Code of Washington Annotated
Title 9a. Washington Criminal Code (Refs & Annos)
Chapter 9A.28. Anticipatory Offenses (Refs & Annos)

West's RCWA 9A.28.020

9A.28.020. Criminal attempt

Currentness

(1) A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.

(3) An attempt to commit a crime is a:

(a) Class A felony when the crime attempted is murder in the first degree, murder in the second degree, arson in the first degree, child molestation in the first degree, indecent liberties by forcible compulsion, rape in the first degree, rape in the second degree, rape of a child in the first degree, or rape of a child in the second degree;

(b) Class B felony when the crime attempted is a class A felony other than an offense listed in (a) of this subsection;

(c) Class C felony when the crime attempted is a class B felony;

(d) Gross misdemeanor when the crime attempted is a class C felony;

(e) Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.

Credits
[2001 2nd sp.s. c 12 § 354; 1994 c 271 § 101; 1981 c 203 § 3; 1975 1st ex.s. c 260 § 9A.28.020.]

Notes of Decisions (247)

West's RCWA 9A.28.020, WA ST 9A.28.020
Current with all laws from the 2015 Regular Session and 2015 1st, 2nd, and 3rd Special Sessions

End of Document

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Appendix F.

the trailer park and into Powers Park. I drew my service pistol and ordered the suspect approximately five times to stop running. He refused to stop.

The suspect ran up to McCune's vehicle and opened the passenger side door. McCune was still in the vehicle. The suspect yelled at her several times "Let's go, come on let's go". McCune told him she couldn't because she did not have the keys. The suspect stood there for a short while and was looking around for a direction to run. I still had my service pistol trained on him and ordered him several more times to get on the ground. The suspect refused to obey my commands. I tried to get around to him but he would just go the other direction to keep the car in between us.

I holstered my service weapon and drew my Taser. I ordered him to stop and get on the ground or I would Tase him. He refused to comply with my order and started to turn away. I fired my Taser into his upper torso over the top of the vehicle. The Taser was effective in stopping the suspect who fell onto the ground. The five second application ended and I ordered the suspect to put his hands out. He refused to do so and started to sit up. I again applied a five second application of the Taser. I again ordered him to comply with my orders and put his hands out. He refused to do so. I again applied a five second application of my Taser. After the third application, he complied and put his hands out.

Officer Schandel arrived at my location and placed the suspect in wrist restraints.

I made the pistol I had taken from the suspect safe. The gun was an F-M HI Point M-95 Detective 9mm. The safety was off and the magazine contained 14 rounds of 9mm ammo. I did not find a round in the chamber.

Kitsap County Sheriff Deputies Arrived on scene to assist. They removed McCune from the vehicle, placed her in wrist restraints and seated her in a patrol vehicle. Delvo and Leonard were currently seated in Officer Schandel's vehicle. Officer Schandel advised me the two males in his car had not been handcuffed or searched yet. We removed them from his vehicle and conducted a pat down safety search.

I called CENCOM to have aide respond to the scene for an evaluation for a Taser application.

Officer Schandel was advised by a witness that the two white males (Delvo and Leonard) had thrown a gun and narcotics into the bushes when we initially started the foot pursuit with the black male. Officer Schandel went to the location and retrieved the items. He located a black Marksman BB gun, a wad of rolled up tinfoil, and a white plastic tube (commonly referred to as a tooter) with burnt residue. I looked at the tinfoil. I opened it and found a partially burnt pill and a black soot trail. By my training and experience, I recognized this type of use of aluminum foil and "tooter" as a common way narcotic pills are ingested (smoked). The witness advised Delvo had thrown the plastic tube and a pocket knife. He said Leonard had thrown the black BB gun and aluminum foil.

Officer Schandel had also located the black male's wallet he had dropped on Granat Street. He located a Washington State Identification card which identified the male as John M. Bale. Officer Horsley ran his data via CENCOM which returned he had a Felony no bail DOC Escaped Community Custody warrant for his arrest. Officer Horsley requested the warrant be confirmed. The warrant was confirmed and I advised Bale he was under arrest for his outstanding warrant. He was acting unresponsive and not answering any questions. SKFR aide crews arrived on scene to evaluate Bale. They removed one of my Taser probes from his chest (the other had already fallen out) and determined he was medically clear to go to Jail. I was able to determine Bale was a convicted Felon from his data return. I asked Officer Horsley to ask CENCOM for a Triple I background check. I later received the Triple I and confirmed Bale was a convicted felon.

Officer Horsley transported Bale to the Kitsap County Jail for booking. He was booked for Assault 1st Degree w firearm (two counts), Felon in Possession of a Firearm, Resisting Arrest, Obstructing, and the DOC Felony warrant with total bail set at $200,000.00.

I read McCune her Miranda Warning Rights from my department issued card. McCune verbally acknowledged she understood her rights. I asked McCune if she knew about the gun. She said she did not even know the black male. She said he was a friend of a friend whom she was giving a ride to. I asked McCune if she would give me her permission to search her vehicle. She said I could search her vehicle. She said the only thing she had in the vehicle was some knives. I had KCSO Deputy McDonald stay by McCune in the event she revoked her consent to allow me to search.